



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

re application of:

David BOTSTEIN, et al.

Application Serial No. 09/989,721

Filed: November 19, 2001

For: NUCLEIC ACIDS ENCODING PRO809

) Examiner: Spector, Lorraine

) Art Unit: 1647

) Confirmation No. 2434

) Attorney's Docket No. 39780-2730 P1C55

) Customer No. 35489

EXPRESS MAIL LABEL NO. EV 765 978 072 US

DATE MAILED: JULY 5, 2006

PRELIMINARY AMENDMENT

MAIL STOP RCE

Commissioner for Patents

P.O. Box 1450

Alexandria, Virginia 22313-1450

Dear Sir:

On February 23, 2005, the Examiner made a final rejection to pending Claims 124, 129-131 and 135-138. A Notice of Appeal was filed on July 22, 2005, and Applicants' Appeal Brief was filed November 22, 2005. An Examiner's Answer was mailed on May 10, 2006.

Applicants submit herewith is a Preliminary Amendment, which accompanies a Request for Continued Examination under 37 C.F.R. §1.114 for the above identified application. This Amendment is being timely filed requesting no extension of time. Applicants' arguments presented in the previously filed Appeal Brief are incorporated herewith in their entirety. Entry of these documents and consideration of the following arguments is respectfully requested.

Enclosed herewith is a new Declaration under 37 C.F.R. §1.132 by Dr. Paul Polakis, with attached Exhibits A and B.

Also filed herewith is an Information Disclosure Statement providing a list of references providing sufficient identifying information on the previously submitted Blast results as well as copies of the articles or abstracts of additional supporting references. Applicants note that some of the references listed in the Information Disclosure Statement are provided in the form of full-text articles, while others are provided as abstracts. Applicants submit that the full-text articles are provided solely because they are available to Applicants. Applicants do not intend to make any distinction among the references, or to indicate that some references in the IDS are more pertinent or material than others. Applicants respectfully request that the information listed in the Information Disclosure Statement be considered by the Examiner and be made of record in the above-identified application.

Amendment to Claims are reflected in the listing of claims that begin on page 3 of this paper.

Remarks/Arguments begin on page 4 of this paper.